(19,239.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 191.

ISAAC H. HARRIS, PLAINTIFF IN ERROR,

vs.

B. BALK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

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Statement of Case.

The facts concerned in this controversy are plain and unhampered by complications. Jacob Epstein, a resident of Baltimore, Maryland, and trading as the BALTIMORE BARGAIN HOUSE, was a creditor of one B. Balk, a merchant doing business at Washington, North Carolina, in the sum of $344.24 for goods sold to said Balk. During the year 1896 Balk failed. Epstein, being unable to collect the amount owing by Balk, and finding one Isaac H. Harris, also a merchant of Washington, North Carolina, and a debtor of Balk's, in the City of Baltimore, on August 6, 1896, caused to be issued out of the Superior Court of Baltimore City a foreign, or non-resident, attachment against the said Balk, which attachment the Sheriff of Baltimore City laid in the hands of the said Harris and *personally* served him with a summons to appear in the said Superior Court of Baltimore City at the next return day, the second Monday in August, 1896, and answer the said attachment as garnishee. Harris, in obedience to the writ of summons so served upon him, appeared by counsel in the said Court in said cause, and being then indebted to the defendant Balk in the sum of $180, filed his answer admitting the same in due form as provided by the attachment laws of the State of Maryland, after which the said Superior Court of Baltimore City, in due course and as provided by law, rendered

judgment against the said Harris for the sum so admitted. Harris had purchased a quantity of merchandise in Baltimore, and in order to prevent the seizure of the same under execution he made arrangements to pay, and did pay to one of Epstein's counsel, the amount of the judgment thus rendered against him. On August 11, 1896, Balk brought a suit against Harris before a justice of the peace at Washington, North Carolina, to recover the said sum of $180, which action Harris removed to another magistrate on August 14, 1896 (Record, pp. 5-6), before whom the case was tried, and who, on September 2, 1896, gave judgment in favor of Balk, although Harris had pleaded the Maryland judgment in bar. (Record, pp. 7, 8, 9, 29, 30, 31, 32.) Harris took an appeal from the decision of the justice of the peace to the Superior Court of Beaufort County, North Carolina, which was heard at the Fall Term, 1896, of said Court, and, upon the same plea, resulted in a judgment in his favor, reversing the magistrate. On December 9, 1896, Balk took an appeal to the Supreme Court of North Carolina, where on May 4, 1898, the lower Court was reversed and the cause remanded, on the grounds that the affidavit in the Maryland proceedings was defective in not averring that Balk had property in that State and because the payment of the judgment was voluntary. Harris, on November 9, 1898, filed a petition to rehear, which was allowed by the Supreme Court of North Carolina, and after reargument the Court filed an opinion on April 18, 1899, adhering to its former ruling, but abandoning as untenable the two reasons stated in its former opinion, and basing its opinion upon a reason differing entirely from those first expressed, to wit, the *situs* of the debt. The case was then tried again in the Superior Court of Beaufort County, North Carolina, at the May Term, 1901, beginning on May 28, 1901, and judgment was given against Harris, who, on August 19, 1901, appealed to the Supreme Court of North Carolina, where the lower Court was finally affirmed on June 17, 1902. (Record, pp. 15 to 25 and 45 to 53.) Owing to a misunderstanding, a portion of this last-mentioned opinion treated of matters which had been expressly waived and abandoned by counsel for Harris, and in order to correct this misunderstanding and clear the record another petition to rehear was filed on September 8, 1902 (Record, p. 53), which the Court recognized, and in its opinion filed February 24, 1903 (Record, p. 60), so expressed itself as to eliminate all possible complications, leaving the case standing squarely upon the

Federal question, which had been expressly raised and been decided adversely to Harris, the judgment being made final on appeal by the Supreme Court of North Carolina on June 17, 1902. On May 26, 1903, Harris filed in the Supreme Court of North Carolina a petition for writ of error, which was duly allowed, and the case has been brought in due course to the attention of this, the Supreme Court of the United States.

The amount of money involved in the controversy is insignificant, but the legal question is of considerable importance to the mercantile and business world, and is fraught with much interest when viewed in the light of the conflicting decisions of the Appellate Courts of the several States, which makes it desirable to have the law settled beyond peradventure.

Assignment of Errors.

That the point relied upon by the plaintiff in error throughout this litigation has been that certain proceedings had in the Superior Court of Baltimore City, wherein a judgment was rendered against the plaintiff in error at the suit of Jacob Epstein, form a complete bar to the action of the said B. Balk, the defendant in error, for the recovery of the sum in controversy, the said proceedings having been conducted and judgment rendered in strict accordance with the laws of the State of Maryland.

That although the plaintiff in error filed as evidence in his behalf a full and complete copy of the record of the said proceedings in said Superior Court of Baltimore City, duly exemplified, and introduced the statute law of the State of Maryland, showing that the said proceedings were conducted and judgment rendered in exact conformity with the laws and practice of the said State of Maryland, yet the said Supreme Court of North Carolina, in rendering the judgments complained of, failed to give full faith and credit to the proceedings certified by the said Maryland Court, and said decisions are against the title, right, privilege or immunity specially set apart and claimed by the plaintiff in error under Article IV, Section 1, of the Constitution of the United States, and that the question of the recognition of the official acts of the Maryland Court, as is shown by the record, arose directly as well as by clear and necessary intendment, so that said Court erred in giving judgment in the manner and form set forth in the record and herein complained of.

Points and Authorities.

The only question presented for consideration is whether or not the North Carolina Court gave to the proceedings of the Maryland Court that full faith and credit to which the same are entitled under the first section of Article IV of the Constitution of the United States.

It might at first appear, from an examination of the authorities, owing to the diversity of opinion upon the subject, that the question is somewhat confused and not free from doubt, but an analysis of each case and a careful assorting of the authorities make it manifest that the position of the plaintiff in error is wholly tenable, and it can be safely concluded that the question is now settled by preponderance of cases adjudicated by eminent jurists and sustained by learned text writers.

The first question to be considered, and the pivotal point upon which the whole fabric of the case hangs, is whether the judgment rendered by the Superior Court of Baltimore City in favor of Epstein against Harris is a good and valid judgment according to the laws and practice of Maryland, and if this be true, then the judgment must, by the constitutional provision, be accorded due recognition in the Courts of all other States.

For the purpose of convenience in determining this question, it is proper to dissect the whole course of procedure in the attachment case in the Superior Court of Baltimore City, and lay it piece by piece beside the laws of Maryland governing attachments, and by comparison ascertain whether or not the said proceedings were conducted, so far as the statute law is concerned, with that regularity necessary to enable the Court to acquire jurisdiction, and whether the judgment rendered therein is valid under said laws.

In Hodge & McLane on Attachment, Sec. 11 (a Maryland text-book), it is said: "It has been uniformly held in Maryland that the proceeding by attachment is a special one, only authorized by statute, and therefore the jurisdiction conferred upon the Courts is a special and limited one, distinct from and not embraced in their general jurisdiction, and that it must appear affirmatively upon the face of the proceedings that the requirements of the statute have been substantially complied with, otherwise the Court would be acting without jurisdiction and the proceedings would be void."

The attachment laws of Maryland are codified in Article IX

of the Code of Public General Laws, and so much of each section as is applicable will be quoted in full and the corresponding portions of the proceedings in question compared therewith, in order to show whether the statutory requirements were complied with, literally or substantially.

"SEC. 1. Every person and body corporate that has the right to become a plaintiff in any action or proceeding before any judicial tribunal in this State shall have the right to become a plaintiff in an attachment against a non-resident of this State or against a person absconding."

Therefore, Jacob Epstein, a merchant and resident of Baltimore, had the unquestionable right to become the plaintiff in the attachment case.

"SEC. 2. Every person who doth not reside in this State, and every person who absconds, may be a defendant in an attachment; and every corporation * * * "

That B. Balk, the defendant in attachment, was not a resident of Maryland is a concessum in the case, so that he was a proper defendant under this section.

"SEC. 4. No attachment shall issue unless there be an affidavit that the debtor is *bona fide* indebted to the creditor in the sum of ——— over and above all discounts; and at the time of making the affidavit the creditor shall produce the bond, account or other evidences of debt by which the debtor is so indebted; and shall also make affidavit that he knows, or is credibly informed and verily believes, that the said debtor is not a resident of this State, and that he doth not reside therein; * * * "

The affidavit upon which the attachment issued will be found on pages 10 and 33 of the Record, an inspection of which shows that it is literally in the language of the statute. The account, which was produced and filed with the affidavit, is set forth at length on pages 33 to 40, inclusive.

"SEC. 5. * * * The affidavit may be made before the Clerk of the Court from which the attachment shall issue."

The affidavit shows that it was made before Robert Ogle, Clerk of the Superior Court of Baltimore City, from which the attachment issued. (Record, pp. 10, 11, 33, 41.)

"SEC. 7. The affidavit * * * may be made by the creditor, or one of them * * *, or by an agent of the creditor * * *."

The affidavit shows that it was made by Jacob Epstein, the creditor. (Record, pp. 10-33.)

"SEC. 8. Upon making the affidavit and producing the proofs

before the Clerk of the Court from which the attachment is to issue * * * he shall issue an attachment against the lands, tenements, goods, chattels and credits of said debtor."

The affidavit was so made, the account filed and the attachment was issued by the Clerk in due form. (Record, pp. 11-41.)

"SEC. 9. There shall be issued with every attachment a writ of summons against the defendant, and a declaration or short note, expressing the plaintiff's cause of action, shall be filed, and a copy thereof shall be sent with the writ to be set up at the courthouse door by the Sheriff or other officer."

The writ of summons was duly issued (Record, pp. 11-42), and the declaration, or short note, declaring on the common counts in assumpsit, was filed (Record, pp. 12-42), and a copy was duly set up at the courthouse door, as shown by the Sheriff's return. (Record, pp. 12-42.)

"SEC. 10. Any kind of property or credits belonging to the defendant, in the plaintiff's own hands, *or in the hands of anyone else*, may be attached; and credits may be attached which shall not then be due."

The credit of the defendant Balk, to wit, the indebtedness due him by Harris, the garnishee, was attached in the hands of Harris in the jurisdiction, by the laying of the attachment by the Sheriff of Baltimore City in the hands of the said Harris, who was personally summoned to appear and answer the attachment, as shown in the Sheriff's return. (Record, pp. 12-43.)

Thus having demonstrated, by actual comparison, that the proceedings in the attachment were in every particular in conformity with the statute law of Maryland, by which jurisdiction in such cases is obtained by the Courts of that State, let next be examined the statutes concerning the duties and liabilities of the garnishee over whom the Court has thus acquired jurisdiction.

Article IX of the Code of Public General Laws of Maryland further provides:

"SEC. 11. Every attachment issued under the preceding sections shall contain a clause commanding the Sheriff or other officer, at the time of executing the said attachment, to make known to each person in whose hands or possession the lands, tenements, goods, chattels and credits so attached are, if to him it shall seem meet, to be and appear on the return of such attachment before the Court out of which it is issued, to show cause why such lands, tenements, goods, chattels or credits so attached should not be condemned and execution thereof had and made as

in other cases of recoveries and judgments given in courts of record.

"SEC. 12. If neither the defendant nor the garnishee, in whose hands the property or credits may be attached, shall appear at the return of the attachment, the Court shall and may condemn the property and credits so attached, as provided in Section 13, and award execution thereof; provided that no such execution shall issue unless the plaintiff give bond or sufficient security before the Court awarding the execution, to make restitution of the lands, tenements, goods, chattels or credits so as aforesaid condemned, or the value thereof, if the defendant shall at any time within a year and a day—to be accounted from the return of said attachment—appear to the said original action and make it appear that the claim of the said plaintiff, or some part thereof, is not due to the said plaintiff.

"SEC. 13. No sheriff, or other officer, shall levy by way of execution against the garnishee more than the plaintiff's debt and costs, nor more than what the plaintiff shall make appear to be the value of the property and credits attached in the hands of such garnishee, together with such costs only as the garnishee shall put the plaintiff to by denying himself to be indebted to the defendant, and contesting the same, and upon any judgment of condemnation *nisi* against any garnishee for want of appearance or plea, the plaintiff shall be at liberty to proceed and prove his case in the same manner as in any judgment by default *ex parte*, and not otherwise, by proof of his debt, and also the amount of the assets of the defendant in the hands of the garnishee properly subject to attachment; and no judgment of condemnation *nisi* shall be made absolute without such proof; provided that in all cases in which a garnishee has been summoned, at any time after the return of the writ, the plaintiff may file interrogatories in the cause, which shall be served by the sheriff upon the garnishee within 10 days thereafter; or, *if the garnishee shall be a non-resident of this State*, shall be served upon the garnishee by some person to be appointed by the Court in which the case is pending; and if the garnishee shall fail to answer said interrogatories within 20 days after the service of the interrogatories upon him, the plaintiff shall be entitled to judgment against the garnishee for the amount of the claim of the plaintiff for which the attachment was issued."

According to the Maryland laws, in what position did Harris find himself when the Sheriff of Baltimore City served the at-

tachment upon him? He owed Balk $180. If he ignored the summons and refused to answer interrogatories which could have been served upon him, he was threatened with a judgment against him for the entire amount of Epstein's claim. (Sec. 13, *supra.*) If he appeared and contested the attachment in any way, he was liable to be mulcted in costs. (Sec. 13.) And in either event, upon a judgment being rendered against him, his goods which he had purchased, and was continually purchasing, in the Baltimore market, were liable to seizure under execution at any time that Epstein chose to have one issued; or could not Epstein have sued him upon that judgment in North Carolina? There appeared to be, and as a matter of fact was, no rational course left open to him but to appear, answer the attachment by admitting the amount of his indebtedness to Balk and pay the judgment rendered against him, which both relieved him of the costs of the attachment and his goods from the danger of an execution. This course he adopted as the proper one, and he filed, through counsel, his admission of assets (Record, pp. 13-43), after which the Court rendered judgment in due form. (Record, pp. 14-44.)

A garnishee has the right to appear to the action, confess judgment to the amount in his hands and have his costs allowed.

Cockey *v.* Leister, 12 Md., 124.

Judgments *in personam* are binding upon persons living beyond the limits of the State of Maryland, where they *voluntarily appear* and answer the suit, or have been *duly served with process.*

Garner *v.* Garner, 56 Md., 127.

"The Code provides that 'any kind of property or credits belonging to the defendant, in the plaintiff's own hands, *or in the hands of anyone else,* may be attached.' * * * Where money or credits are attached, the inchoate lien attaches to the fund or credits when the attachment is laid in the hands of the garnishee * * * and the *judgment is a personal judgment against the garnishee.*"

Buschman *v.* Hanna, 72 Md., 1-5-6.

The Maryland Code, Art. IX, Sec. 34, provides that any judgment of condemnation against a garnishee and execution thereon, *or payment by such garnishee, is pleadable in bar* to any

action brought against him by the defendant in the attachment for or concerning the property or credits so condemned.

The plaintiff in error maintains, therefore, that so far as the Maryland Court is concerned, having acquired jurisdiction by virtue of personal service of process upon him within the State, the judgment so rendered against him, when measured by the laws, practice and decisions of the State of Maryland, was in every respect valid; hence it was error on the part of the North Carolina Court to refuse to award it full faith and credit when offered in his defense. The Superior Court of Beaufort County, North Carolina, held this view until reversed by the Supreme Court of North Carolina (Record, p. 15). The first opinion of the Supreme Court was based upon the failure of the affidavit to aver that the defendant, Balk, had property within the State of Maryland, and also upon an alleged voluntary payment. As no such averment is required by the laws of Maryland, the position taken was clearly erroneous, as obviously was that on the second point, which the Court frankly admitted, and having entirely abandoned those grounds, the first opinion is merely incidentally referred to. The second opinion (Record, p. 23), which was handed down after reargument, takes the position that the reversal of the lower Court is adhered to, but "for an entirely different reason from that given on the first hearing," that is, the *situs* of the debt, declaring that the *situs* was with Balk.

As to the question of the *situs* of a debt, there has been much controversy and a great diversity of opinion, but the weight of authority favors a position different from that taken by the Supreme Court of North Carolina in this case.

A debt is something which (in the absence of some written evidence) exists only in contemplation of law. It is merely the right one person has to ask or demand of another a certain amount of money or other property; an incorporeal right, invisible, intangible and without substantive existence.

Situs means the site or locality of something. In the usual acceptation of the word it must of necessity relate to something which has actual physical and substantial existence; so it would be apparently stretching even legal fiction to an unreasonable extent to attempt to give something which has no substantial

existence a substantial location, except when compelled for purposes of administration or taxation.

The person to whom the debt is due may ask or demand payment of his debtor at any place where his debtor may be found, and may sue thereon and recover judgment therefor in the courts of any State in this country where his debtor may be, temporarily or otherwise, provided, of course, the debtor is regularly served with process within the jurisdiction.

If, therefore, a debt has a *situs* at all, it exists, for the purposes of garnishment, at any place where the debtor may be or where a suit could be maintained against him by his creditor. There a creditor of his creditor may, by substituting himself for the creditor, sue and recover the debt due by the debtor thus garnished with the same facility that the creditor could so sue and recover.

The plaintiff in error contends, however, that no consideration of the *situs* of the debt should be entertained in this case whatever, for, as has been explained, the *real* question is whether or not there was a valid judgment rendered *in personam* against him by the Maryland Court; if so, it is good everywhere, and he can plead it successfully in bar of the action of Balk regardless of the question of the *situs* of the debt.

Inasmuch as the *situs* of the debt has figured conspicuously in this case, the law with reference thereto is worthy of consideration.

Many able, interesting and conflicting, as well as instructive, discussions of the subject appear in the reports and text-books, and even if it be conceded that the *situs* of the debt is an important consideration in this case, still the best authority sustains the position of the plaintiff in error.

The latest text-book treating of the subject is Minor on Conflict of Laws (1903), in which the author discusses the question with much ability and sums up the various theories regarding the *situs* of debt, and after pointing out with great clearness the fallacies of those theories he condemns and his reasons therefor, concludes as his opinion, supported by a large and distinguished array of authority, that the correct rule is that "*the situs of a debt for the purposes of garnishment is not only at the domicile of the debtor, but in any State in which the garnishee may be found, provided the municipal law of the State permits the debtor to be garnished, and provided the Court acquires juris-*

diction over the garnishee through his voluntary appearance, or by actual service of process upon him within the State."

Minor on Conflict of Laws, Section 125.

This is supported by a long line of cases, the most important of which are the following:

Chicago, Rock Island & Pacific Railroad *v.* Sturm, 174 U. S., 710.
Tootle *v.* Coleman, 46 C. C. A., 132; 107 Fed., 41.
Mooney *v.* Buford Mfg. Co., 72 Fed., 32.
Morgan *v.* Neville, 74 Pa. St., 52.
Savin *v.* Bond, 57 Md., 228.
National Insurance Co. *v.* Chambers, 53 N. J. Eq., 468.
Harvey *v.* Railroad, 50 Minn., 405.
Wyeth *v.* Lang, 127 Mo., 242.
Lancashire Insurance Co. *v.* Corbetts, 165 Ill., 592.
Embree *v.* Hanna, 5 Johns., 101.
C., B. & Q. Ry. *v.* Moore, 31 Neb., 629.
Hull *v.* Blake, 13 Mass., 153.
Blake *v.* Williams, 6 Pick., 286.
Harwell *v.* Sharp, 85 Ga., 124.
Neufelder *v.* Ins. Co., 6 Wash., 341.
Mooney *v.* R. R., 60 Iowa, 346.
Howland *v.* R. R., 134 Mo., 474.
R. R. *v.* Thompson, 31 Kans., 180.
R. R. *v.* Crane, 102 Ill., 249.
Fithian *v.* R. R., 31 Pa. St., 114.
Wabash *v.* Dougan, 142 Ill., 248.
Berry *v.* Davis, 77 Texas, 191.
Nichols *v.* Hooper, 61 Vt., 295.
Samuel *v.* Agnew, 80 Ill., 553.
Richardson *v.* Lester, 83 Ill., 55.
B. & O. S. W. Ry. *v.* Adams, 60 L. R. A., 396.
Campbell *v.* Home Ins. Co., 1 S. C. N. S., 158.
Glover *v.* Wells, 40 Ill. App., 350.
Roche *v.* Ins. Co., 2 Ill. App., 360.
Moore *v.* C., R. I. & P. Ry., 43 Iowa, 385.
Cochran *v.* Fitch, 1 Sandf., Ch. 142; 7 L. Ed., 272.
Mahany *v.* Kephart, 15 W. Va., 609.
Holland *v.* M. & O. Ry., 84 Tenn., 414.
Pomeroy *v.* Rand, McNally & Co., 157 Ill., 176.
Cole *v.* Fliteraft, 47 Md., 312.

Bank *v.* Merchants' Bank, 7 Gill (Md.), 415.
Brengle *v.* McClellan, 7 G. & J. (Md.), 434.
Newland *v.* Reilly, 85 Mich., 151.
Felt Mill *v.* Blanding, 17 R. I., 297.
Cohoon *v.* Morgan, 38 Vt., 236.
Black on Judgments, Secs. 593, 857, 859 and 923.
Rood on Garnishment, Secs. 242-5.

In Rood on Garnishment is found a valuable consideration of the subject, and from which (Secs. 242-5) the following is extracted:

"For most purposes—taxation, etc.—it has long been a recognized and established fiction of law that their *situs* is at the domicile of the owner. It would seem important to remark that this is fiction merely, and that it is impossible, from the nature of things, for intangible property to have an actual location were it not for the fact that some Courts and text writers have at times appeared oblivious of it. Though it is not discussed in the opinion, Chancellor Kent, as early as 1809, seemed to have taken it for granted that this fiction does not apply to debts, when they are sought to be reached by garnishment, when the owner does not reside in the jurisdiction where the action is. (Embree *v.* Hanna, 5 Johns., 101.) And the same doctrine has been recognized and applied tacitly, or positively and directly asserted in almost all of the courts of last resort in America since that time. * * * In its essential elements a garnishment suit is a suit brought by the principal defendant against the garnishee in the name and for the benefit of the plaintiff. The plaintiff is empowered by law to step into the shoes of the garnishee's creditor and acquire his rights; no more, no less. Whatever he could do, the plaintiff, under the statutory novation of garnishment, may do as his assignee and attorney-in-fact by operation of law. *Wherever the garnishee could be sued by the defendant for the demand, he may be charged as garnishee on account of it. Other States must recognize this right if they recognize garnishment at all.* * * * The *situs* of property for the purpose of jurisdiction is one thing, and its *situs* for the purpose of determining the rights of the parties thereto is another, and the two are not necessarily the same. * * * Whatever rule each State may choose to adopt to regulate proceedings in garnishments brought in their respective jurisdictions, this is the only correct rule to determine the question when it is sought to collect a second time

from one who has been charged as garnishee in a foreign jurisdiction. The garnishee is helpless and at the mercy of the Court that charged him as such. What has he done that he should be placed upon the rack by the contending Courts and stretched both ways?"

A number of the cases cited are pronounced in supporting this line of reasoning, the most important of which is the case of C., R. I. & P. Ry. *v.* Sturm, 174 U. S., 710, to which a more extended reference will be made hereafter.

In the case of Tootle *v.* Coleman, 46 C. C. A., 132, the Court say: "The ground of objection is that the *situs* of the choses in action attached by the garnishment was in St. Joseph, Missouri, where the debts were contracted and were payable, and where the contractors resided; and the argument is that the choses in action could not be attached where they were not located. This theory has received the sanction of the Supreme Court of Kansas in Missouri Pacific Railway *v.* Sharritt, 43 Kans., 375, and the condemnation of the Supreme Court of the United States in C., R. I. & P. Ry. *v.* Sturn., 174 U. S., 710, in which the Kansas case was reviewed and disapproved. * * * It (the decision in Railway *v.* Sturm) is not only decisive of the issue in this case, but is in accord with reason, with the great weight of authority and with the general understanding and practice of the profession. * * * Our conclusion is that the right to garnish a debtor is not limited to the *situs* of the chose in action, and a garnishment by a citizen of one State of a debtor of the same State, whose creditor resides, whose debt was contracted and is payable in another State, is such an attachment of the chose in action as will authorize the Court to obtain jurisdiction to dispose of it by publication of the summons against the defendant."

In the case of Morgan *v.* Neville, 74 Pa. St., 52, *all* the parties, the plaintiff, defendant and garnishee, were non-residents of the State of Maryland, where the attachment was sued out, and the Court held that the plaintiff had the same right to serve the garnishment upon the garnishee as would a citizen of Maryland have had, had he found him in the jurisdiction. The laws of Maryland, recognizing the constitutional right, are exceedingly liberal in respect to non-residents, and any person may be a plaintiff in an attachment suit, irrespective of whether he be a resident of the State or not. This is expressly decided in Hodgson *v.* Southern B. & L. Assn., 91 Md., 439, and Mason *v.* Union Mills, 81 Md., 446.

In Wyeth *v.* Lang, 127 Mo., 242-247, the Court held that "service by publication only upon a non-resident may be sufficient to sustain garnishment of his debtor, although the indebtedness is by its terms payable at the residence of the non-resident. *A debt may be garnished at any place where suit may be brought by the creditor if the laws of the place authorize it.*"

In Lancashire Insurance Co. *v.* Corbetts, 165 Ill., 592, the Court say: "The jurisdiction of garnishment of a debt is not determined by the *situs* of the debt, *but by the liability of the garnishee to be sued therein.* A judgment against a garnishee, rendered without fraud or collusion, after full disclosure of a prior garnishment in a Court of another State having collateral jurisdiction, must, after it has been satisfied, be held a complete bar to the proceeding in the other State. * * * Some Courts seem to hold the doctrine that, where there is no personal service of process on the principal defendant, the proceedings must be instituted in the jurisdiction where the debt had its *situs* (that is, the domicile of the principal defendant). We are satisfied that the weight of modern authority is otherwise."

In Harvey *v.* Great Northern Railway, 50 Minn., 405-6-7, the Court held: "*For the purpose of attachment a debt has a situs wherever the debtor can be found. Wherever the creditor might sue for its recovery, there it may be attached as his property,* provided the laws of the forum authorize it. Neither is it material that the debt was not made payable in the State where the attachment proceedings are instituted. *The pending of a prior attachment in another State, which binds the debt, may be set up by way of defense to a suit by the defendant in attachment to recover the same debt.*"

In Embree *v.* Hanna, 5 Johns., 101, Chief Justice Kent held that the attachment in that case — which was also sued out in Maryland—was pleadable in abatement to the suit instituted in New York by the defendants against the garnishee.

In C., B. & Q. Ry. *v.* Moore, 31 Neb., 629, the Court says: "The judgment in the garnishment suit set up by the plaintiff in error, being valid and binding upon the parties thereto in the State where rendered, is entitled to full faith and credit in this State."

Black on Judgments, Sec. 859: "The true doctrine is that a judgment is to receive in all Courts the same faith, credit and respect that is accorded to it at home."

Ibid., Sec. 593: "It is universally agreed that when a judgment is recovered against a garnishee by an attaching creditor

and paid, such judgment may be pleaded by the garnishee in bar of any action against him for the same debt brought by the principal defendant."

Ibid., Sec. 853: "The judgment of a foreign Court of competent jurisdiction in a proceeding in the nature of a garnishment is binding and conclusive, and affords a complete protection to the garnishee, and the money paid under it cannot be recovered back by the original owner of the debt in another country."

As to the conclusive effect of judgments of sister States, see *Ibid.*, Secs. 857-9 and 923.

The rule is that the rights of a garnishee are to be carefully protected. He is not to be placed in a situation, except from his own negligence, where he will be compelled to pay the debt twice.

Burton *v.* District Township, 11 Iowa, 169.

In the case of Morgan *v.* Neville, 74 Pa. St., 52, the lower Court took somewhat the same view of the case as did the Supreme Court of North Carolina in the case at bar, and the facts being similar, with the single exception that Epstein resided in Maryland (which tends to strengthen the case if it has any effect at all), it is interesting to consider the opinion of the Supreme Court of Pennsylvania in reversing the lower Court.

Page 56: "Agnew, J.—This action in the Court below was for the wages of labor performed by George Neville for William Morgan, a contractor upon the Sand Patch Tunnel in Somerset county. Morgan set up a payment made by him as garnishee of Neville, in an attachment issued by a justice of the peace of Allegheny county, Maryland, in favor of one Michael Shannon, served on Morgan in Maryland, and judgment against him by default. All the parties were residents of Somerset county, Pennsylvania, but there was no evidence of collusion or combination between Shannon and Morgan to evade the Pennsylvania statute as to the wages of labor by going into Maryland for the purpose of having the attachment executed. We must, therefore, assume that the Maryland proceeding was *bona fide*. The Court below held that because Neville, the plaintiff below, was not in Maryland and was not served with notice, he was not affected by the judgment in the attachment, and that the Maryland Court ought to have enforced the Pennsylvania Act exempting the wages of labor from execution. In both of these respects the learned judge fell into error. Upon the first point the judge seems to have misapplied the doctrine of Smith *v.* Steel, 7 S. & W., 447,

which decided that a judgment *in personam* in a foreign attachment against a vessel under the civil code of Louisiana was not binding, and would not be enforced in Pennsylvania, and that the Louisiana Court not having jurisdiction of the person of the defendant, the record was not within the protection of the first section of the Article of the Constitution of the United States, requiring full faith and credit to be given in such State to the public acts, records and judicial proceedings of every other State. But Steel *v.* Smith concedes jurisdiction in the attachment over the property of the defendant within the State of Louisiana, and this is the only feature in that case applicable to this, the defendant below claiming credit only for the money paid by him under the Maryland attachment. There being no collusion, Shannon, though a citizen of Pennsylvania, had a right to sue out his attachment in Maryland. He falls within the words and the spirit of the first clause of the second section of the fourth Article of the Constitution of the United States, that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States. One of these is the right to institute actions of any kind in the Courts of another State (Corfield *v.* Coryell, 4 W. C. C. R., 380, 1). Shannon went into Maryland, a right he had under that clause, and there made the affidavit required by the Maryland statute and sued out his attachment. So far, then, the magistrate had jurisdiction. The attachment was served personally on Morgan, the debtor of Neville, when found in Maryland. A citizen of Maryland would have an undoubted right to serve his attachment on Morgan, had he found him there, in order to secure his debt against Neville; and he having this right, Shannon has the same right under the Constitution of the United States. The debt to Neville was therefore legally attached, and the jurisdiction of the Maryland justice's court vested fully without notice of the writ to Neville. In foreign attachment (and this proceeding is in the nature of a foreign attachment) notice is not given to the defendant by service of the process, for the valid reason that he cannot be served, and service on his property or on his debtor is all that can be had, in the nature of the thing. The garnishee must give notice to his own creditor if he would protect himself, and this he did, in this instance, the next morning, as he proved by himself and Neville. The Maryland tribunal having jurisdiction, it was not error to disregard the Pennsylvania Act exempting the wages of labor from attachment in the hands

of the employer. * * * (Page 58.) It is contended here that the record of the judgment is defective in showing no judgment against the defendant or the garnishee, but only a judgment of condemnation against the property or debt. But the judgment is a judgment *in rem*, and, therefore, against the property or debt, and according to the 13th section of the Maryland Code, which says, if neither the defendant nor garnishee in whose hands the property or credits may be attached shall appear, at the return-day of the attachment, the Court may condemn the property and credits so attached and award execution thereof. And by the 37th section the judgment of condemnation is made pleadable in bar in any after-action brought against the garnishee by the defendant. * * * "

(*Note by Counsel.*—The posting of notices in three places mentioned in the latter part of the foregoing opinion does not pertain to Court attachments, but has special reference to proceedings before a justice of the peace, with which we are not concerned in this case. Code of Maryland, Art. LII, Sec. 41.)

In this case the Court treats the judgment as a judgment *in rem*, through a manifest misapprehension of the Maryland laws, as heretofore shown, but to show more clearly that such judgment is regarded in Maryland as a judgment *in personam* the following quotations are taken from Hodge & McLane on Attachment:

SEC. 184. " * * * If the judgment of condemnation be against funds or credits in the hands of a garnishee, it is a judgment *in personam* against such garnishee. * * * There is no distinction, as to their force and legal effect, between a judgment of condemnation in attachment, where the requisitions of the attachment laws have been complied with, and a judgment *in personam*. Thus, in an action of debt on a bond of indemnity, conditioned to save the plaintiff harmless for paying a debt due by the plaintiff to A, where the plea was *non damnificatus*, a replication setting forth an attachment and condemnation against the plaintiff was held good on demurrer. Gordon *v.* Mayor and City Council, 5 Gill, 242; Taylor *v.* Phelps, 1 Harris & Gill, 492; Brooke *v.* Macnemera, 1 Harris & McHenry, 80."

SEC. 189. "With regard to the force and legal effect to be attributed to a domestic judgment pronounced by a Court of competent jurisdiction, there is no distinction between a judgment of condemnation rendered in an attachment, in a case

where the requisitions of the attachment laws have been complied with, and a judgment *in personam*. They stand upon the same principle; they both import absolute verity; are equally conclusive with respect to the subject-matter adjudicated, and cannot be re-examined or impeached in any collateral proceeding. And so where, in proceedings in attachment, there was nothing to show that the garnishee made any defense whatever, but assented to the judgments of condemnation, those judgments, like others pronounced by Courts of competent jurisdiction, must be respected as final and conclusive on the rights ascertained and established by them. Barney *v.* Patterson, 6 Harris & Johnson, 202; Peters *v.* League, 13 Md., 58; Henkelman *v.* Smith, 42 Md., 164; Groome *v.* Lewis, 23 Md., 137."

SEC. 192. "The judgment of condemnation in attachments is not for the delivery of specific property to the plaintiff, but the lands or goods are condemned and rendered liable to execution and sale. When final judgment of condemnation is recovered, either *in rem* against the property specifically attached or *in personam* against the garnishee, the sheriff does not proceed under the attachment, but a writ of *fieri facias* must be issued, and under this writ the sheriff either sells the property actually condemned, *or proceeds in the ordinary way to levy upon the property of the garnishee.*"

As bearing with great importance upon the whole case, the opinion of the Court of Appeals of Maryland in Savin *v.* Bond, 57 Md., 228, is relied upon with much confidence by the plaintiff in error. Beginning on page 229, the Court say:

"The facts of this case are as follows: Savin, the appellant, distrained the goods of John Bond for rent; Bond sued out a writ of replevin from a justice of the peace, and executed a replevin bond with J. Jesse Moore as surety in the penal sum of $150. The justice of the peace rendered a judgment in the replevin suit in favor of Bond, the plaintiff; Savin appealed, and the Circuit Court for Washington County reversed the judgment of the justice of the peace and rendered a judgment in favor of Savin, *de retorno habendo* of the property, valued at $75 and costs. On the 17th of September, 1877, Savin, the appellant, instituted this suit on the replevin bond against Bond and Moore. Five pleas were filed by the defendants, which need not be particularly stated, as by the agreement of the parties all errors in pleading were waived. The plaintiff having proved the execution of the bond, and that the appraised value of the prop-

erty mentioned in the recital of the bond, and which had been taken in the distress proceedings therein referred to, was $74.85, rested his case. Whereupon the defendants, to support the issues on their part joined, read in evidence the record of proceedings in the Supreme Court of the District of Columbia, which record at length is omitted by consent, and the following statement of facts in lieu thereof is taken and accepted, to wit:

" 'On the 26th of May, 1877, the Chesapeake & Ohio Canal Co. commenced an action by way of foreign attachment against Savin, the appellant, in the Supreme Court of the District of Columbia, claiming the sum of $143.75 to be due it from the said Savin. Process was issued against Savin, and was returned "cannot be found." On the same day a writ of attachment was also issued to affect the rights and credits of Savin in the hands of the garnishees. The writ, together with interrogatories, was duly served on Bond and Moore on the same day. On the 6th of June, 1877, Moore filed his answer to the writ and interrogatories, and confessed his indebtedness to Savin in the sum of $94.34, adding, "I being security on replevin bond for John Bond for said amount, P. C. Savin distrained John Bond's property for rent; said Bond replevied his goods, and P. C. Savin appealed to Court, and there had a decision in his favor." And on the same day (June 6, 1877) John Bond, the other garnishee, also filed his answer thereto, stating, "I am indebted to P. C. Savin in the sum of $94.34." On the 31st of December, 1877, the following judgment was entered by said Court: "It appearing to the Court that, though the defendant was duly notified of the pendency of this suit by publication, he has not entered his appearance therein; and it appearing that the defendant is indebted to the plaintiff in the sum of $143.75, with interest from November 15, 1876, besides costs; and it appearing by the answer of the said garnishee, Bond, that he is indebted to the said defendant in the sum of $94.35, and no cause having been shown to the contrary, it is considered by the Court that the said sum of $94.35 of the defendant's, so attached by the Marshal as aforesaid, be and the same is hereby condemned in the hands of said garnishees towards the satisfaction of the plaintiff's above demand and costs, and that the plaintiff have execution thereof against the said garnishee, which said judgment was duly entered according to the rules of said Court." '

"The following statement of facts was agreed upon as if they were given in evidence by competent testimony: 'That the

money for which Bond confessed judgment of condemnation, as per record from District of Columbia, offered in evidence by defendants, was money which was payable by Bond to said Savin, as appears by papers in No. 6 Appeals, March Term, 1877, which are to be admitted in evidence, to show value of property seized by the distress, and for all other purposes pertinent to the trial of this cause; that at the time of said judgment of condemnation, confessed by Bond as aforesaid, the Canal Company was indebted to Bond as an employee (subject to exception by the plaintiff as to its admissibility), and that the Canal Company retained from the wages and pay of Bond, with his consent, enough to pay said judgment of condemnation and costs. It is admitted that the defendant can prove that the debt sued for in this action is the same debt or credit that was seized in the attachment proceeding, and, if the Court shall regard this offer as admissible and competent in this action, it shall be regarded as a fact proved in the cause; but the plaintiff does not admit or agree that it is competent and admissible evidence, and reserves his right to object to the same. It is further agreed that *the defendants, Moore and Bond, and the plaintiff, Savin, were each and all citizens and residents of the State of Maryland, and that they were such before and at the time of contracting the debt or obligation sued for in this action, and at the time said attachment was issued and laid, and that the said debt or obligation was and is payable in Maryland.*'

"Upon this statement of facts the plaintiff offered two prayers, as follows:

"1st. That the plaintiff is entitled to recover, notwithstanding the record of proceedings in attachment in the Supreme Court of the District of Columbia, read in evidence by the defendants, and the other evidence in the cause.

"2d. That the said record of proceedings and judgment of condemnation in the Supreme Court of the District of Columbia constitutes no defense to this action, and the plaintiff is entitled to recover the appraised value of the property replevied, as shown by the appraisers, according to the agreed statement of facts.

"These prayers were refused by the Circuit Court, and the prayer of the defendants was granted, instructing the jury that upon the agreed statement of facts and the record from the District of Columbia, given in evidence, the plaintiff is not entitled to recover if the jury find such record offered in evidence is correct.

"It is provided by the Code, Art. X, Sec. 37 (Code of 1888, Art. IX, Sec. 34), that 'any judgment of condemnation against a garnishee and execution thereon, *or payment by such garnishee*, shall be sufficient and pleadable in bar in any action brought against him by the defendant in the attachment for or concerning the property or credits so condemned.'

"In this case it appears that the judgment of condemnation was paid to the Canal Company by Bond, one of the defendants. This was as effective as if the same had been paid by Bond and Moore; and if the judgment of condemnation was valid and conclusive upon Savin, the defendant therein, such payment extinguished the indebtedness of the defendants to the plaintiff. (Drake on Attachments, Sec. 710.)

"The case turns upon the question of the validity and effect of the judgment of condemnation. Under the Constitution of the United States, Art. IV, Sec. 1, 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' (Revised Statutes U. S., Sec. 905.) It was decided in Hughes *v.* Davis, 8 Md., 271, that this provision is applicable to judgments rendered in the District of Columbia.

"In the construction of the constitutional provision the following propositions have been settled by judicial decision:

"1st. That a judgment rendered in one State by a Court having jurisdiction has in every other State the faith and credit of a domestic judgment. (Bank United States *v.* Merchants' Bank, 7 Gill, 430.)

"2d. In support of such judgment jurisdiction is presumed, and the *onus* of disproving it rests upon the party assailing it. This was decided in the case last above cited, and also in Bissel *v.* Briggs, 9 Mass., 462, and Scott *v.* Coleman, 5 Littell (Ky.), 349.

"3d. The service of process upon Bond and Moore, the garnishees, within the District of Columbia gave the Supreme Court jurisdiction to render the judgment in question. (Cooper *v.* Reynolds, 10 Wall., 316; Starbuck *v.* Murray, 5 Wend., 148; Blyler *v.* Kline, 14 P. F. Smith, 130; Taylor *v.* Phelps, 1 H. & G., 501.) In this case the judgment relied on by the defendants comes incidentally in question. In such case it is laid down in Taylor *v.* Phelps, 1 H. & G., 501, that if it 'be by a Court of competent jurisdiction, it has the force and effect of a domestic judgment, and the correctness of it cannot be examined into, but it is conclusive.' We refer also to Barney *v.* Patterson, 6 H. & J., 182.

"*The objection made by the appellant that the garnishee was*

not a citizen of the District of Columbia is without force. His debt to the appellant was payable wherever he was found (Turner v. Williams, 26 E. C. L., 110), and process having been served upon him, the Supreme Court of the District had unquestionable jurisdiction to render the judgment; and the same having been paid, it follows that there was no error in granting the prayer of the appellees and refusing those of the appellant. Judgment affirmed."

It is difficult to find a case which more clearly bears out the contention of the plaintiff in error than the rules laid down in the above-cited case, and if there remains any doubt upon the subject it must be cleared away by the language of the Supreme Court of the United States in C., R. I. & P. Ry. *v.* Sturm, 174 U. S., 710, from which the following copious quotations are taken:

"How proceedings in garnishment may be availed of in defense—whether in abatement or bar of the suit on the debt attached or for a continuance of it or suspension of execution—the practice of the States of the Union is not uniform. *But it is obvious and necessary justice that such proceedings should be allowed as a defense in some way.*

"In the pending suit plaintiff in error moved for a continuance, and not securing it, pleaded the proceedings in garnishment in answer. Judgment, however, was rendered against it and sustained by the Supreme Court on the authority of M. P. Ry. *v.* Sharritt, 43 Kans., 375, and 'for the reasons stated by Mr. Justice Valentine in that case.' The facts of that case were as follows: The Missouri Pacific Railway Co. was indebted to Sharritt for services performed in Kansas. Sharritt was indebted to one J. P. Stewart, a resident of Missouri. Stewart sued him in Missouri and attached his wages in the hands of the Railway Company, and the latter answered in the suit, in accordance with the order of garnishment on the 28th of July, 1887, admitting indebtedness, and on the 29th of September was ordered to pay its amount into Court. On the 27th of July Sharritt brought an action in Kansas against the Railway Company to recover for his services, and the company, in defense, pleaded the garnishment and order of the Missouri Court. The amount due Sharritt having been for wages, was exempt from attachment in Kansas. It was held that the garnishment was not a defense. The facts were similar, therefore, to those of the case at bar.

"The ground of the opinion of Mr. Justice Valentine was that

the Missouri Court had no jurisdiction, because the *situs* of the debt was in Kansas. In other words, and to quote the language of the learned justice, 'the *situs* of a debt is either with the owner thereof, or at his domicile, or where the debt is to be paid, and it cannot be subjected to a proceeding in garnishment anywhere else. * * * It is not the debtor who can carry or transfer or transport the property in a debt from one State or jurisdiction into another. The *situs* of the property in a debt can be changed only by the change of location of the creditor who is the owner thereof, or with his consent.'

"The primary proposition is that the *situs* of a debt is at the domicile of the creditor, or, to state it negatively, it is not at the domicile of the debtor. The proposition is supported by some cases; it is opposed by others. Its error proceeds, as we conceive, from confounding debt and credit, rights and remedies. The right of a creditor and the obligation of a debtor are correlative but different things, and the law, in adapting its remedies for or against either, must regard that difference. Of this there are many illustrations, and a proper and accurate attention to it avoids misunderstanding. This Court said by Mr. Justice Gray in Wyman *v.* Halstead, 109 U. S., 654, 'the general rule of law is well settled that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor.' And this is not because of defective title in the creditor or in his administrator, but because the policy of the State of the debtor requires it to protect home creditors. Wilkins *v.* Ellett, 9 Wall., 740; 108 U. S., 256. Debts cannot be assets at the domicile of the debtor if their locality is fixed at the domicile of the creditor, and if the policy of the State of the debtor can protect home creditors through administration proceedings, the same policy can protect home creditors through attachment proceedings. For illustrations in matters of taxation, Kirtland *v.* Hotchkiss, 100 U. S., 491; Pullman Car Co. *v.* Pennsylvania, 14 U. S., 18; Savings and Loan Society *v.* Multnomah County, 169 U. S., 421. Our attachment laws had their origin in the custom of London, Drake, Sec. 1. Under it a debt was regarded as being where the debtor was, and questions of jurisdiction were settled on that regard. (Andrews *v.* Clerke, 1 Carth., 25.) * * * The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up, the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place. But we do not think it is neces-

sary to resort to the idea at all or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicile of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and *considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor.* He, and he only, has something in his hands. That something is the *res*, and gives character to the action as one in the nature of a proceeding *in rem*. (Mooney *v.* Buford, 72 Fed., 32; Conflict of Laws, Sec. 549.) To ignore this is to give immunity to debts owed to non-resident creditors from attachment by their creditors and to deny necessary remedies. A debt may be as valuable as tangible things. It is not capable of manual seizure, as they are, but no more than they can it be appropriated by attachment without process and the power to execute the process. A notice to the debtor must be given, and can only be given and enforced where he is. This, as we have already said, is a necessity, and it cannot be evaded by the insistence upon fictions or refinements about *situs* or the rights of the creditor. Of course, the debt is the property of the creditor, and because it is, the law seeks to subject it, as it does other property, to the payment of *his* creditors. If it can be done in any other way than by process against and jurisdiction of his debtor, that way does not occur to us.

"Besides the proposition which we have discussed, there are involved in the decision of the Sharritt case the propositions that a debt may have a *situs* where it is payable, and that it cannot be made migratory by the debtor. The latter was probably expressed as a consequence of the primary proposition, and does not require separate consideration. Besides, there is no fact of change of domicile in the case. The plaintiff in error was not temporarily in Iowa. It was an Iowa corporation and a resident of the State, and was such at the time the debt sued on was contracted, and we are not concerned to inquire whether the cases which decide that a debtor temporarily in a State cannot be garnished there, are or not justified by principle. The proposition that the *situs* of a debt is where it is to be paid is indefinite. '*All debts are payable everywhere unless there be some special limitation or provision in respect to the payment, the rule being that debts, as such, have no locus or situs, but accompany the creditor everywhere, and authorize a demand upon the debtor every-*

where.' 2 Parsons on Contracts, 8th Ed., 702 (9th Ed., 739). *The debt involved in the pending case had no 'special limitation or provision in respect to payment.' It was payable generally, and could have been sued on in Iowa, and therefore was attachable in Iowa. This is the principle and effect of the best-considered cases—the inevitable effect from the nature of transitory actions and the purpose of foreign attachment laws if we would enforce that purpose.* * * * It follows from these views that the Iowa Court had jurisdiction, and that the Kansas Courts did not give the proceedings in Iowa the faith and credit they had there and were hence entitled to in Kansas."

The foregoing opinion treats also of the subject of exemptions, and mentions the duty of the garnishee to notify his creditor of the attachment proceedings, but neither of these questions arise in this case. The question of exemptions was raised, it is true, but was disposed of in the first opinion by the Supreme Court of North Carolina (Record, p. 20). The question of notice has never been raised, nor could it have been successfully urged, as the record discloses that ample notice was given to have enabled Balk to have availed himself of any good defense he might have had. Balk sued Harris before the justice of the peace on August 11, 1896, just five days after the attachment was served (Record, pp. 5-27), and Harris filed his answer (Record, pp. 6-28), setting up as his defense the Maryland proceedings, thus giving due notice. The date of the answer does not appear, but it was filed prior to the date on which the magistrate rendered his judgment, September 2, 1896 (Record, pp. 9-32), so that this notice was given within a few days after the attachment. Under the laws of Maryland (Code, Art. IX, Sec. 12) Balk had a year and a day from the return-day of the attachment in which to appear to the action and make defense and defeat it if his defense were good; so that he had an abundance of notice, but failed to avail himself of it, for the manifest reason that he had no defense to make, as *he states in his own testimony* (Record, p. 18): *"I owe Jacob Epstein about* $344. *I did not wish him to make me a present of the debt."* This being true, it is difficult to see how he was prejudiced by the attachment, as it amounted to nothing more in effect than an involuntary payment by him on account of an admittedly honest indebtedness.

Applying the language of the Court in C., R. I. & P. Ry. *v.* Sturm, 174 U. S., 710, to the case at bar, it will be observed that *the debt in this case was "payable generally and without any*

special limitation or provision in respect to payment." It is most earnestly contended by the plaintiff in error, in reliance upon the above authority, that the *situs* has nothing in common with the principles governing this case; that the sole question, outside of the validity of the statutory proceedings in Maryland, is whether or not Balk could have sued Harris for the debt in the Maryland Courts on August 6, 1896, the date the attachment was sued out, and if he could, then the debt was attachable in Maryland. As he had the unquestionable right to do so under the laws and decisions of Maryland, as well as the constitutional right, the question is fully answered.

Harris *had* property in the State of Maryland at the time of the issuing of the attachment—the goods which he had purchased; so that clears up possible contention on that point.

It is immaterial whether the garnishee be temporarily within the State if he could be sued there by his creditor; and this being the true test, and having been applied with the result that it cannot be questioned that Balk had the right to sue Harris in Maryland at that time had he seen fit to do so, it entirely disposes of that question.

It is submitted, however, that a discussion of *situs* at all is a departure from the true issue involved in the case. The application of any doctrine of *situs* is denied for the reason that it contemplates a *res*, or an action *in rem*. This case, as has been clearly demonstrated, was an action which resulted in a judgment *in personam* against Harris. *Was it a good judgment in Maryland? If so, it must be recognized in North Carolina and elsewhere. This is the sole question.*

Aside from the statute law of Maryland and the decisions of its Courts referred to hereinbefore in support of this contention, other Courts have gone to considerable length in sustaining this position. Minor on Conflict of Laws, Sec. 125 and notes, in commenting on the case of Mooney *v.* Buford, 72 Fed., 32, uses these words: "A garnishment is a proceeding *in personam*. This is contrary to the usually-accepted idea, but it is believed the Court is correct. The attachment is a proceeding *in rem*, the *res* being the general liability of the debtor, which general liability, upon its seizure by the attaching creditor, can be rendered fixed and definite only by a proceeding *in personam* against the debtor, that is, by garnishment."

And to quote some of the language of the Court in the said case of Mooney *v.* Buford, 72 Fed., 32: "The decisions cited

proceed upon the assumption (which we think clearly erroneous) that jurisdiction in garnishment against a debtor of the principal defendant, who cannot be personally served with process, depends, where tangible property has not been attached, upon the *situs* of the debt. The assumption makes garnishment impossible in cases of foreign attachment whether the debtor sought to be reached is a resident or a non-resident. Escape is sought from this result by saying, as in Douglas *v.* Insurance Co., 'that the laws of a State, for the purposes of attachment proceedings, may fix the *situs* of a debt at the domicile of the debtor.' That is a sheer fiction. * * * No such fiction, however, is necessary, because the jurisdiction in such a case does not depend upon the *situs* of the debt, but upon control of the debtor, obtained by means of due process, duly served. Even if, as in cases of domestic attachment, the creditor and the *situs* of the debt be within the State, effective jurisdiction in garnishment can be acquired only by the service of process upon the debtor. It is notice to the debtor that gives the plaintiff in garnishment a lien upon the debt or an assignment of it, and once that is accomplished, notice by publication, or in such other manner as may be provided by statute, may be given to the principal defendant, upon which the Court may proceed to final judgment, disposing of the debt as effectively as, upon like notice by publication, it may dispose of a chattel seized in attachment. * * * No Court can rightfully disregard the lien upon the debt which is established by the service of process in garnishment upon the debtor."

These principles are elaborately discussed and ably disposed of in the opinion of the Vice-Chancellor in the case of National Fire Insurance Co. *v.* Chambers, 53 N. J. Eq., 468.

Page 482: " * * * The burden of the argument * * * was that the debt due from the complainant to Chambers had its *situs* in New Jersey, and therefore was not within the jurisdiction of the Pennsylvania Courts. But the difficulty with this argument is that it goes too far, and would defeat all foreign attachments so far as relates to reaching debts due the defendant in attachment, because they would all be held to have their *situs* with the non-resident defendant out of the State, and so be beyond the jurisdiction of the State. Some confusion and seeming inconsistencies are found in the books growing out of a failure to distinguish between the character of the two kinds of chattels which are sought to be reached by foreign attachment, viz.,

tangible chattels and choses in action. In order to obtain a lien upon tangible chattels, which alone are subject to seizure and levy, it is necessary that there should be an actual or constructive manucaption by the officer. * * * To effect this actual seizure and levy it is necessary that the chattel should be within the jurisdiction and within the physical power and reach of the officer. Hence the canon that the *res* must be within the jurisdiction. The failure to distinguish in this respect between tangible chattels and choses in action has led to the erroneous notion that the debt or right of action, in order to be reached, must also be within the jurisdiction. But this is not so, for the reason that the debt is incapable of actual seizure, and hence none is necessary. On this point I adopt the language of the Supreme Court of Vermont in Cohoon *v.* Morgan, 38 Vt., 236: 'It is true that the trustee process is sometimes called "attaching a debt," because it creates a lien upon the debt as attachment does upon personal property. But the validity of the two kinds of liens rests on wholly different grounds. Attachment of personal property must be by taking possession of it. But no possession can be taken of a debt. To make the lien valid against the debt all that is required is notice to the debtor (garnishee) of the suit, a mere summons.' * * * It follows that the real and only liability of a party as garnishee is by reason of his owing a debt to the defendant in the suit, and the garnishment consists in nothing more than a 'warning' to him not to pay the debt to his creditor until the plaintiff's debt is satisfied. In process of garnishment, as thus understood, the fact that the debt subject to be garnished has its *situs* out of the jurisdiction has never been held to stand in the way of the process of the Court. I come, therefore, to the conclusion that the real and only ground of jurisdiction in case of attachment over choses in action is the service, within the jurisdiction, of warning upon the debtor; and when this is done jurisdiction is obtained. * * * "

Page 485: "The old practice in the city of London Courts * * * agrees with that upheld by the Courts of this country in the numerous cases above cited. The mere fact that the legal domicile of the garnishee is without the jurisdiction is not a protection against garnishment. * * * "

Page 491: "And I further suggest that the fact that a party owing a debt may be subjected to the injury of being compelled to pay it twice—once directly to his creditor, and then again to a third person for the benefit of his creditor, and so, in effect,

indirectly to his creditor a second time—has always been treated by Courts desiring to do justice as a matter of serious consideration, and, in fact, the one thing to be guarded against. * * * "

Page 497: "Proof was made to the satisfaction of the Court of the debt due from him to Harding, Whitman & Co., and they have, besides, sued in this State and obtained judgment, after personal service upon him, for the debt. It will be no injustice to him to apply this debt of the complainant to him toward the payment of his indebtedness, *pro tanto,* to Harding, Whitman & Co. But it will be a great injustice to complainant to compel it to pay this debt twice."

In conclusion, the plaintiff in error earnestly asserts the same proposition, for, aside from the sound legal position upon which he rests with confidence, it would be most inequitable and unjust to charge him with double liability, and thus force the payment of the debt twice. For these reasons the plaintiff in error respectfully submits that the judgment of the Supreme Court of North Carolina should be reversed.

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Since the case has been pending in this Court, the senior counsel, Mr. Charles F. Warren of Washington, North Carolina, has departed this life. He was active in the conduct of the case from the beginning and was intensely interested in the legal questions involved, and as he cannot now take part in its final argument, it is but fitting, in respect to his memory, to make this mention of him upon the Brief, a portion of which is taken from his own work. Always conscientious and able, characteristic of the school of gentlemen and lawyers of which he was an honored member, his loss is keenly felt.